(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: MAY 22 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a transportation services company. It seeks to employ the beneficiary permanently in the United States as a senior programmer analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, certified by the United States Department of Labor (DOL). Upon reviewing the petition, the director determined that the evidence did not establish "that the beneficiary met the minimum requirements at the time the Form ETA-9089 was accepted." The director denied the petition accordingly.

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further provides:

> A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Id.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

As noted above, DOL certified the ETA Form 9089 in this matter. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

None of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. Federal courts have recognized the scope of DOL's role in reviewing the ETA Form 9089. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be

expected to interpret the meaning of terms used to describe the requirements of a job in the labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying the plain language of the labor certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the ETA Form 9089.

The key to determining the job qualifications is found on the ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

The required education, training, and experience for the offered position are set forth at Part H of the ETA Form 9089, lines 4-10. Here, Part H shows that the position requires a master's degree, or foreign educational equivalent, in computer science or, in the alternative, information science or a related field, and ten years of experience in the job offered.

The record contains a copy of the beneficiary's Bachelor of Commerce degree and Master of Business Administration degree from the in India. The initial petition contained an evaluation from dated July 1, 2011. The evaluator states that the beneficiary's Bachelor of Commerce degree and Master of Business Administration degree are equivalent to a "[b]achelor's and master's degree from a regionally accredited institution." On appeal, the petitioner submitted information about that lists the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as one of its external sources.[1] Also on appeal, the petitioner submitted a letter from the Deputy Executive Director, Evaluations at , dated May 8, 2012. Regarding the previously submitted evaluation, states that "[t]he equivalency statement suggests a comparable credential, at a comparable level, in a comparable field in the U.S. system of education." The petitioner also submitted two additional evaluations on appeal. The evaluation from is dated May 8, 2012, and signed by The evaluator states that the beneficiary's Master of Business Administration degree is equivalent to a U.S. Master of Business Administration degree. The evaluation from is dated May 7, 2012, and signed by The evaluator states that the beneficiary's Bachelor of Commerce degree and Master of Business Administration degree are equivalent to a U.S. Bachelor of Business Administration and a U.S.

[1] The AAO notes here that it has reviewed the Electronic Database for Global Education (EDGE) created by AACRAO. In the section related to the Indian educational system, EDGE provides that a Bachelor of Commerce degree "represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis." EDGE further states that the Master of Business Administration "represents attainment of a level of education comparable to a bachelor's degree in the United States." That information has been incorporated into the record of proceedings for consideration in any future filings.

Master of Business Administration degree. None of the evaluations state that the beneficiary holds a master's degree in the "major field of study" stated on the Form ETA 9089.

In the instant petition, the record contains no relevant, probative evidence indicating that the beneficiary has ever received a master's degree, or a foreign educational equivalent, in computer science, or in information science or a related field, as required by the Form ETA 9089. Furthermore, neither the petitioner, nor counsel, claims that the beneficiary holds a master's degree in one of the acceptable major fields of study listed on the Form ETA 9089. On appeal, counsel only asserts that the beneficiary holds the U.S. equivalent of both a master's degree and a bachelor's degree in Business Administration. None of the evaluations explain how business administration is a related field to either computer science or information science. Therefore, as the director ultimately concluded, the beneficiary does not meet the education requirements set forth on that form. On this basis alone, the petition may not be approved.

Beyond the decision of the director, the record does not establish that the beneficiary has the required 10 years of experience in the job offered. The submitted letters do not meet the substantive requirements in the regulation at 8 C.F.R. § 204.5(g)(1). The letters do not provide a sufficient description of the job duties for the beneficiary and do not reflect 10 years of employment in the job offered (senior programmer analyst). According to line 10 in part H of the ETA Form 9089, experience in an alternate occupation is not acceptable. Additionally, the ETA Form 9089 states that the beneficiary terminated employment with [redacted] on January 30, 2009. The employment letter from this company, however, lists the ending date of the beneficiary's employment as December 19, 2008. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The record does not resolve this inconsistency.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.